



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2013

Ms. Michelle M. Kretz
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2013-22030

Dear Ms. Kretz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509088 (City Public Information Request No. W029097).

The City of Fort Worth (the "city") received a request for information pertaining to a named employee.¹ The city states it has released some of the requested information, but claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 2009.051(a) of the Government Code provides a governmental body "may develop and use alternative dispute resolution procedures." *Id.* § 2009.051(a). Any such alternative

¹The city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

dispute resolution procedures “must be consistent with Chapter 154, Civil Practice and Remedies Code.” *Id.* Section 2009.054(b) of the Government Code provides in part as follows:

(1) a communication relevant to the dispute, and a record of the communication, made between an impartial third party and the parties to the dispute or between the parties to the dispute during the course of an alternative dispute resolution procedure are confidential and may not be disclosed unless all parties to the dispute consent to the disclosure; and

(2) the notes of an impartial third party are confidential except to the extent that the notes consist of a record of a communication with a party and all parties have consented to disclosure in accordance with Subdivision (1).

Id. § 2009.054(b). Thus, by statute, confidentiality is limited to communications made in “alternative dispute resolution procedure[s]” and “notes of an impartial third party.” *Id.*

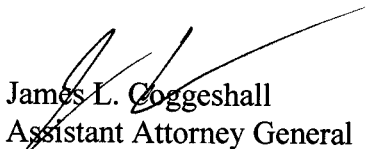
You inform us the city has adopted a mediation procedure to resolve disputes pursuant to section 2009.051(a) of the Government Code. You explain the mediation process is conducted by an impartial third party organization or employee who meets the minimum training requirements for mediators. You argue the submitted information is confidential under section 2009.054 because (1) it consists of notes created by an impartial third party during a mediation process and (2) the parties at issue have not consented to its release. Based on your representations and our review of the submitted information, we find some of the submitted is confidential under section 2009.054(b) of the Government Code. *See* Open Records Decision No. 658 at 5 (1998) (discussing predecessor statute to section 2009.054). Therefore, the city must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 2009.054(b) of the Government Code. However, you have not established the remaining information is confidential under section 2009.054(b), and the city may not withhold it under section 552.101 on that ground. Accordingly, the city must release the remaining information to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 509088

Enc. Submitted documents

c: Requestor
(w/o enclosures)